

THE ORIGINS AND IMPACT OF THE PARENTS CHARTER*

Michael Adler, Alison Petch and Jack Tweedie

This paper is in two parts. In the first part, we attempt to put the parental choice provisions in the 1981 Act into a historical context by considering the development of public education in Scotland since 1945; we examine the enactment of these provisions in the Scottish legislation and compare them with analagous provisions in the English legislation; and we assess the extent to which the Scottish legislation has altered the balance between individual parents and education authorities. In the second part, we describe the early implementation of the legislation by education authorities; we examine the take-up of placing requests and their impact on parents and the admission of pupils to schools; and look at the effects of decisions of appeal committees and sheriffs on regional policy and practice in an attempt to assess whether the legislation has found the right balance between the interests of individual parents and the policy concerns of education authorities.

PART 1

THE 1946 ACT

The Education (Scotland) Act 1946 established a framework for the development of public education in the post-war period. It was a consolidating act and incorporated the reforms contained in the Education (Scotland) Act 1945. Among the most important of these were:

1. education was made compulsory from 5 to 15
2. education was to be organised as primary, secondary and tertiary education, all pupils were to proceed from primary to secondary and (unless exempted) from secondary to (part-time) tertiary education until the age of 19
3. education was to be free with the proviso that education authorities could charge fees in some or all classes in a limited number of schools

provided that this did not prejudice the provision of free education in other schools.

Considering its importance, the 1946 Act was not a particularly substantial document⁽¹⁾. This is because, like most other educational legislation in the UK, the Act was, in large measure, an enabling Act. As such, it created a statutory framework and conferred broad powers on education authorities which were responsible for the provision of education. Thus, a statutory duty was imposed on authorities

to ensure that adequate and efficient provision is made throughout their area of all forms of primary, secondary and further education⁽²⁾.

The 1946 Act imposed a further duty on authorities 'to prepare and submit for the approval of the Secretary of State a scheme or schemes for the exercise of their powers and duties'⁽³⁾, and the Secretary of State could either approve or ask the authority to revise or modify its scheme⁽⁴⁾. The Secretary of State was also given powers to declare an education authority in default of its duties and order the authority to discharge the duty⁽⁵⁾.

Parents were given a duty under the 1946 Act to provide education for their children, either by sending them to school regularly or, otherwise, by providing efficient education suitable to the 'age, ability and aptitude' of the child⁽⁶⁾. Moreover, if they failed to discharge this duty, they could find themselves liable to a criminal prosecution⁽⁷⁾. It is, of course, true that, under s28, the Secretary of State and education authorities were 'to have regard to the general principle that, so far as is compatible with the provision of suitable instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents'. However, this did not mean, nor was it intended to mean, that pupils were necessarily and in all cases to be educated in accordance with the wishes of their parents. As Lord Denning said of the analogous provisions in Section 76 of the Education Act, 1944 in one of the leading English cases:

(the Act) only lays down a general principle to which the (authority) must have regard. This leaves it open to the (authority) to have regard to other things as well and also to make exceptions to the general principal if it thinks fit to do so. It cannot be said that an (authority) is at fault simply because it does not see fit to comply with the parents' wishes⁽⁸⁾.

Lord Denning's opinion is generally accepted as the correct

interpretation of Section 76 of the English Act. A number of Scottish decisions likewise made it clear that Section 29 of the Scottish Act placed Scottish education authorities under a duty to take parents' wishes into account but did not require authorities to give effect to them⁽⁹⁾.

The idea that parents (to say nothing of children) might have been given rights as well as duties in respect of education was quite foreign to the spirit of the legislation and to the spirit of the times. A legal right is a legally enforceable claim which is made against some person or persons who seek to deny its enactment. In the case of education, a parental right would, in practice, have been enforced against an education authority or, possibly, against the Secretary of State. However, the legislation entrusted education authorities to promote the educational well-being of all pupils and, in the event of an authority failing to do so, gave the Secretary of State powers to declare an authority in default of its duties and require it to discharge them. It made little sense to give parents rights to use against education authorities when their interests in their children's were, in effect, being enhanced by the progressive expansion of educational opportunities.

As we have seen, education authorities were required to prepare and submit for approval to the Secretary of State a general scheme of educational provision. In addition, they were required to prepare and submit for approval a 'promotion scheme' (subsequently known as a 'transfer scheme') describing how pupils were to be promoted from primary to secondary schools and the basis on which children were to be allocated to different schools⁽¹⁰⁾. The Act contained no indication of the kinds of schools which authorities might develop at each stage of education, or the criteria for allocation which authorities might develop and apply.

DEVELOPMENTS IN THE LIGHT OF THE 1946 ACT

There is always and inevitably pressure to fill a vacuum and this was indeed the case with the 1946 Act. In 1947, the Advisory Council on Education published its blueprint for the reconstruction of secondary education in the post-war world⁽¹¹⁾. The Council recommended the omnibus school, providing for all pupils from a fixed area throughout their compulsory secondary education, seeing this as 'the natural way for a democracy to order the post-primary schooling of a given area'. Although the Council believed that, by the age of twelve pupils differed so much in academic potential that they should be streamed for all academic subjects, its view did not prevail. This was in part because of the SED's belief that only a minority of children were academic and its long-standing commitment to the principles of separate educational provision for academic and non-academic children known as 'bi-partism', which was thought to provide a socially efficient model of schooling and to be the

legitimate descendent of the Scottish democratic tradition. But it was also in part because of strong attachments by education authorities to their local academies and to the meritocratic system of schooling of which they were a part. Thus, the 1946 Act did not lead to the introduction of omnibus schools in urban areas but resulted instead in a new form of bi-partism in which 'junior secondary schools' were developed alongside the well-established 'senior secondaries' and in which 'promotion' arrangements were increasingly based on intelligence testing. The Advisory Council's report notwithstanding, this continued commitment to bi-partism reflected a consensus of opinion between the major institutional actors; between Labour and Conservative parties, between ministers (of either party) and the SED, between the SED and the education authorities, and between local councillors and Directors of Education.

The post-war period has been one of fairly sustained expansion in education. Taking the UK as a whole, public expenditure on education as a proportion of GDP doubled (from 2.8% to 5.6%) between 1948 and 1967, reached a peak of 7.0% in 1975 but has been falling back since then⁽¹²⁾. At secondary level, there was a steady expansion in the proportion of pupils admitted to selective schools. This was, in part, a response to rising aspirations and an increasing local demand for selective schooling. However, as McPherson and Raab point out⁽¹³⁾, this expansion unwittingly contributed to the undermining of confidence in the bipartite system:

As higher proportions of successive age groups were selected for senior secondary courses, so the number of dissatisfied 'borderline' cases was statistically bound to increase. Moreover, an expanding senior secondary sector continued to drain junior secondary schools of resources, teachers and esteem.

Education authorities responded in a variety of ways. Some Labour controlled local authorities started to establish comprehensives. However, this was on a piecemeal, one-off basis; such schools co-existed with senior secondaries which still creamed off their intakes and, as far as we know, no authority attempted to introduce comprehensive schooling 'across the board'. Elsewhere, authorities 'upgraded' junior secondaries, again on a one-off basis, by adding senior secondary classes and thereby creating an 'omnibus' school. The SED also responded in a number of ways. Through the Advisory Council, education authorities were asked to reduce the proportion of pupils embarking on senior secondary courses. At the same time, in an attempt to stem the wastage from senior secondary courses (which increased as more and more pupils embarked upon such courses), the 'O' grade was introduced. Paradoxically, by designing 'O' grades on the assumption that one-third of the age group would succeed, the SED unwittingly put additional pressure on the system, since it followed that as many as half the age group would need to embark on the course.

SECONDARY SCHOOL REORGANISATION

By the early 1960s, it was clear that the consensus was beginning to break down; the return of a Labour government committed to the abolition of selection and the reorganisation of secondary education along comprehensive lines brought the matter to a head. Pressures for such a change, which had been party policy for some time, came largely from south of the border and there was relatively little indigenous pressure for change (even from staunchly Labour education authorities) from within Scotland itself⁽¹⁴⁾. Nevertheless, it was soon clear that the government wanted this policy to be applied in Scotland as well as in England. It was equally clear, given the lack of impetus for change at local level and the continuing support for selective schools in many areas (which included traditional working class communities like Fife and Lanarkshire, as well as the big cities) that some form of central direction would be necessary.

In Circular 600/1965⁽¹⁵⁾, the Labour government presented the case for reorganisation as a natural development in an evolving Scottish tradition of common education and of common opportunities to acquire certification. All that was absolutely required of local authorities without exception was that they should 'no longer ... allocate pupils to 'certificate' and 'non-certificate' courses when they start the secondary stage'. Logically this seemed not so much to require abolition of selection as postponement from 12 to 14 and a number of authorities submitted proposals for secondary school reorganisation along these lines. However, in contrast to the DES which stated a preference for the all-through 11-18 comprehensive school but also endorsed five other ways in which comprehensive schooling could be organised on a non-selective basis, the SED advocated a single final form of organisation, the six year all-through comprehensive for 12-18 year olds, although it did concede that some variant on the two-tier system might be an unavoidable interim solution especially in scattered, rural areas. The match between the political complexion of central government and the majority of local authorities helped the SED to get its way. On occasion, local councillors over-ruled the Director of Education; on other occasions, the SED used its powers to amend the local authority's proposals: in the end, after extensive negotiations with 35 local authorities, the large majority opted for all-through 12-18 comprehensives.

Secondary school reorganisation in Scotland is best understood as a political rather than an educational initiative, as a British policy developed and applied to Scotland rather than a Scottish policy. Paradoxically, it was implemented more uniformly and more comprehensively than the parallel policy in England and Wales – mainly because the majority of local authorities were Labour controlled and the minority who weren't did not hold out. In many cases the Directors went along with the changes, although in few cases did they actively take the lead. The means chosen by Ministers (north and south of the border) was that of 'government by

circular' – education authorities were told how they were expected to exercise their statutory duties under the Act and, as a last resort, the government could withhold its approval or use its default powers to achieve its ends. Section 29 of the 1946 Act (which had now become section 29 of a new consolidating act, the 1962 Act) was not deemed to be relevant to these changes – parents could not insist on the retention of selective schools because they wished to send their children there. At the same time, no one suggested that parents should be given a right to a non-selective secondary education for their children (Such a notion is, in any case, intrinsically problematic, not least because rights are individual claims while the organisation of schooling is a collective policy).

REORGANISATION OF LOCAL GOVERNMENT

Leaving aside the raising of the school leaving age, the next major policy change to affect the organisation of schooling was not the result of an educational initiative at all. The reform of local government in 1975 was intended to improve regional planning, enhance the quality of the professional input at the local level (not least through its commitment to corporate management) and improve the calibre of local councillors. With education allocated to regional (and islands) authorities, the number of education authorities was reduced from 35 to 12. Many authorities were immediately faced with the problem of harmonising the disparate administrative arrangements and transfer schemes of the various antecedent authorities. The immediate effect was to disturb a rather settled pattern of relationships, e.g. with the SED, but its long-term effect was to alter the balance of power between central and local government inasmuch as the largest of the new authorities must now constitute a powerful countervailing force to the centralising tendencies of the SED. Or, so it seemed until recently.

THE BACKGROUND TO THE 1981 ACT

We now turn to our main concern, which is with the Education (Scotland) Act 1981 and in particular with the provisions of Section 1 (inserted into the 1980 Act as Section 28A) which strengthen the rights of parents to select schools for their children and curtail the discretion of the local authority with regard to school allocation. In presenting an account of this measure, it is instructive to make some comparisons with the secondary school reorganisation 15 years previously. Among the differences is the fact that the 1981 Act was brought in by a Conservative government which, unlike the Labour government in 1966, could not exploit 'same party' control over the large majority of education authorities. The financial and

demographic contexts were very different too. In 1966, school rolls were increasing and educational expenditure was expanding; by 1981, both these trends had gone into reverse – falling school rolls had been affecting primary schools for some years and were about to have an impact on secondary schools while public expenditure on education had passed its peak and was declining in real if not in absolute terms. This latter development, which reflected the government's ideological hostility to public expenditure in general and to the 'welfare state' in particular, had already begun to sour the relationship between central and local government. Foremost among the similarities was the fact that there was virtually no impetus for change at the local level in Scotland and the pressure for reform came, once again, from south of the border. All education authorities in Scotland allocated children to schools on a catchment area basis or, in the case of secondary schools, in terms of their 'feeder primaries', and gave parents who were unhappy with the allocated school an opportunity to request an alternative. Most authorities, including the Conservative controlled authorities, were reasonably flexible although one or two authorities adopted rather strict 'neighbourhood school' policies and only allowed pupils to attend schools other than the ones to which they were allocated in special circumstances, e.g. if they had a sibling at the school or for medical reasons. There certainly was political pressure on Scottish Ministers to confront the more restrictive authorities but the pressure was local rather than national. This pressure was undoubtedly strongest in Edinburgh and in 1980 prompted the Secretary of State to use his powers under the existing legislation to call in and amend Lothian's transfer scheme⁽¹⁶⁾.

By contrast, the situation in England and Wales was very different⁽¹⁷⁾. There, the issue of parental choice had been on the political agenda for some years. In 1969, the Labour government had raised the possibility of establishing an independent appeals system for parents as part of a new Education Bill. Somewhat surprisingly, the proposal received only moderate support, even from parents groups. Preparations for consultation were set in hand but these were cut short by the election called in 1970. The issue did not surface again during the lifetime of the Conservative government from 1970-1974 (while Margaret Thatcher was Secretary of State for Education). However, after the defeat of the government in February 1974, pressure grew among Conservatives for a re-evaluation of their education policies. Norman St John Stevas was appointed Education Spokesman and was charged with developing new policy initiatives that would lead to a new and distinctive Conservative education policy. He and his colleagues quickly realised the potential appeal of parental choice, which had the added advantage of being consistent with the values

Conservatives traditionally placed on freedom from state control and on parents' responsibilities for their children. St John Stevas announced the Parents Charter in August 1974 and a Charter of Parents Rights was included in the Conservative Manifesto for the October 1974 election⁽¹⁸⁾. Subsequently they twice put forward legislation based on the Parents Charter while in opposition: a Conservative backbencher put forward a Private Member's Bill in 1974⁽¹⁹⁾ and in 1976, the Conservatives introduced a set of new clauses relating to parental choice as amendments to Labour's Education Bill in an attempt to publicise their concern with parental choice and to stall the Bill. Whereas the rationale for parental choice had initially emphasised freedom from state control and the assumption of parental responsibilities for their children, it was now presented as a means of improving educational standards – the introduction of market forces would force unpopular (poor) schools to close and enable popular (good) schools to expand. It was also seen to appeal to those parents whose children would previously have gone to grammar schools and who were disenchanted with comprehensive schooling, and to those who were alarmed at the growth of radical educational ideas and would welcome an attempt to cut the teaching profession down to size.

Although none of these parliamentary initiatives met with any success, they did help to put pressure on the Labour government to propose some form of parental choice legislation of its own. Eventually, after issuing a consultation paper⁽²⁰⁾, the Labour government included a number of parental choice provisions in its 1978 Education Bill. Although the primary effect of these provisions was to give LEAs statutory powers to control school numbers, the Labour government certainly claimed that it was establishing and enhancing parental choice. Be that as it may, the Bill died in Committee when the election was called.

While the Conservative opposition and the Labour government both attempted to legislate for parental choice in England and Wales, there were no comparable attempts at legislation for Scotland. The dearth of politicians with strong interests in education among the depleted ranks of Scottish Conservative MPs after the party's defeat in the 1974 election, meant that Scottish interests were not represented among those Conservatives who set out to create a new and distinctive approach to education. Although the 1974 Parents Charter quickly became official Conservative Party policy, it was really an English policy which did not easily take root in Scotland. Several Scottish Regions had experienced disputes with parents who objected to the Regions' refusals to admit their child to the school they preferred, but these disputes were seen as regional matters, not matters which called for a statutory resolution. Largely for this

reason, the Labour Party in Scotland did not find it necessary to propose its own form of parental choice legislation and the Scottish Office took the view that provisions analogous to those in the 1978 Education Bill were not needed for Scotland^(20a). In any case, there was less public concern in Scotland with educational standards or with the introduction of comprehensive schooling, and less support for an attack on collectivism in practice or the espousal of an individualistic ethic. However, when the Conservatives were returned in 1979 on a Manifesto which included a clear commitment to legislate for parental choice⁽²¹⁾, it was clear that the situation had changed. As with the proposals on secondary school reorganisation 15 years previously, the government wanted legislation on parental choice to apply to Scotland as well as to England.

THE MAKING OF THE 1981 ACT

In 1979, the new Conservative government immediately set about revising the statutory rights of parents and the duties of education authorities with respect to parental choice in England and Wales. By this time, however, the new Secretary of State for Education and Science, Mark Carlisle, considered that strengthening the rights of parents to choose schools should be qualified by concerns for reducing authorities' expenditure on education. Thus, although the Education Act 1980 gave English and Welsh parents a right to choose schools, education authorities could refuse a parent's choice of school if complying with that choice would "prejudice the provision of efficient education or the efficient use of resources." Parents could appeal against an authority's decision to a local appeal committee, but the appeal committees would be appointed by the education authorities and could contain a majority of education authority members.

The SED moved quickly to follow the English legislation. Alex Fletcher had been appointed Under-Secretary of State for Education and Industry in May 1979 and the onus fell on him to implement his party's Manifesto pledges. The first indication of his intentions came when he met members of the COSLA Education Committee on 17 August 1979⁽²²⁾. One of the principal items on the agenda was the government's proposal for a Parents Charter⁽²³⁾. The discussion was only of a preliminary nature. The Minister said that falling school rolls presented an opportunity for relaxing school catchment areas and widening parental choice of school and expressed the view that an extension of the rights and responsibilities of parents would be good for overall educational standards. He stressed the need for more information, including details of examination results, to enable parents to make informed choices and invited comments on a two-

tier appeal system under which parental applications would be considered first by school councils and subsequently by an appeals committee with an independent element, which would be administered locally by the education authority. COSLA's response was unenthusiastic. Dr Malcolm Green (Chairman of the Education Committee) pointed out that authorities were already required to 'have regard to' parental wishes and argued against the imposition of a uniform system. He could see no problem about making more information available but pointed to some of the difficulties which increased parental choice might create for authorities, emphasising that limits would have to be placed on the number of places available at each school.

At the end of the meeting the Minister suggested that further discussions should take place at official level between the SED and COSLA in order to clarify the issues involved, investigate likely difficulties and possible means of resolving them, and set out (possibly in the form of a draft circular) the steps that might be taken by authorities to implement the proposals he had in mind. Thus, at this stage, it would appear that the Minister was not yet thinking in terms of legislation. Dr Green accepted the invitation, on the understanding that the COSLA officials would merely feed in their expertise without committing themselves or COSLA in advance to whatever proposals the government came up with, and nominated six Directors to participate in the discussions as representatives of COSLA. When the group met on 2 October 1979, it was made clear that the SED's aim was now to produce a Consultative Paper on which COSLA and other interested parties would be asked to comment in due course. Whether or not this would be followed by legislation would depend on the outcome of the consultations and the willingness of authorities to enter into voluntary arrangements. Discussion focussed on the scope for authorities to relax their existing policies on admissions and catchment areas so as to enhance parental choice of school, the possibility of a two-tier system of appeals, the feasibility of pilot schemes in which parents would be asked to choose one of a number of schools within an enlarged catchment area, and the information parents would require in order to exercise choice. SED officials acknowledged that problems would arise but reiterated the Minister's hope that authorities would no longer refuse parents if space was available at the school of their choice. They also accepted that any new arrangements should still preserve the general principle that priority should be given to parents who wished their children to be educated at the local school and take into account the desirability of ending the use of annexes and temporary accommodation and the need to determine the optimum annual intake, with some capacity retained for incomers to the area. COSLA's nominees participated in the discussions as individuals rather

than as representatives and no attempt was made to reach a consensus. However, it is significant that, at this and a subsequent meeting on 19 October 1979 when a number of background papers, including papers on admissions and transfers in Manchester and the ILEA were considered, there was very little enthusiasm for the idea of 'free choice' even on a pilot basis.

Prior to the publication of the Consultative Paper, the Minister had outlined his ideas to COSLA and the SPTC and a series of discussions had taken place between SED officials and COSLA representatives. The Minister had some contact with the Conservative Group on Lothian Regional Council but there appears to have been very little contact between the SED and the DES. Policy was developed independently by a small group of officials within the SED who met regularly with the Minister. Alex Fletcher was almost certainly more 'bullish' than his officials and had to compromise on a number of issues. However, his officials experienced little difficulty in supporting the principle of parental choice or in translating this into a workable policy.

The Consultative Paper which was issued in March 1980 was the fourth in a series of papers issued by the Minister⁽²⁴⁾. At a press conference to launch the paper, Alex Fletcher questioned whether low rates of exceptional admissions and transfers in Scotland reflected widespread satisfaction with the existing arrangements (as the education authorities, in particular, insisted) and claimed that it indicated a high level of apathy, which was engendered by existing practices. He also invoked the beneficial consequences of market forces, asserting that 'a touch of consumerism is no bad thing for a nationalised industry'⁽²⁵⁾. The introduction to the paper made it clear that account had been taken of the need to reduce existing levels of educational expenditure, and claimed that the proposals would enable disadvantaged children to escape from the deprived areas in which they were currently trapped. The paper itself did not propose the abolition of zoning schemes or catchment areas but argued that, pending legislation to this effect, 'all authorities should accept an obligation to meet parents' wishes if this can be done within the existing accommodation and staffing resources of the school in question'⁽²⁶⁾. It accepted COSLA's argument that authorities needed to determine planned capacity and annual intake limits for each school, agreed that the former could be less than the school's physical capacity where an authority wished to end the use of annexes, temporary buildings or other unsatisfactory accommodation and sought views on whether or not places should be reserved for incomers to the catchment area. In order to deal with oversubscribed schools, authorities would be required to devise guidelines for determining which cases should

be given priority. Priority would still be given to children from the catchment area but where some children from outside the catchment area were refused admission, authorities were to set up appeal procedures involving, in the first instance, school councils and subsequently committees of the authority with the same constitution and powers as those proposed in the (English) Education (No 2) Bill which was then before Parliament. The Consultative Paper also listed the information (including examination results) which authorities would have to provide for parents and concluded by giving local authorities, teachers associations and bodies representing parents twelve weeks in which to submit their comments.

The content of the Consultative Paper reflected a number of developments in the government's position. First, legislation was promised, if not immediately then at least at some time in the future. This reflected the Minister's wish to enable parents to exercise choice at all stages of education; his conclusion that education authorities would not all agree to this voluntarily; and the fact that his powers were limited under the existing legislation to amending an authority's policy on transfer to secondary school. In addition to these general considerations, it was no doubt also influenced by the concurrent dispute between the Secretary of State and Lothian Region over Lothian's transfer scheme. Second, although the Consultative Paper encouraged authorities to consider adopting wider catchment zones, it no longer contained any specific references to the piloting of 'free choice' schemes. Likewise, although it encouraged schools to develop their own ethos, it was noticeably cautious about curricular diversity. These two changes can be taken to reflect the influence of the SED. Third, in borrowing only one provision (on the constitution and powers of appeal committees) from the English legislation, strong evidence is provided for the independent elaboration of policy on this issue for Scotland.

The Consultative Paper was given a fairly cool reception. Altogether, some 15 organisations responded, of whom four were teachers' unions and three were headteachers' associations⁽²⁷⁾. There was general support for the retention of catchment areas (and again little enthusiasm for the adoption of wider catchment zones); for giving authorities the power to set admission limits; for reserving places for incomers to the catchment; and for the provision of information. On the other hand, there was widespread criticism of the government's approach on the grounds that it would raise expectations which would not be satisfied; a general concern about its effects on the reputations of individual schools, especially in deprived areas, and on staff morale, and a widely-expressed concern that among secondary schools it would result in the return of a 'two-tier' system. Many

reservations were also expressed about the publication of examination results. COSLA took the view that the existing legislation satisfied the 'broad interests' of parents and pupils. It opposed the imposition by statute of standard practices and procedures, e.g. in relation to appeal procedures, on local authorities and criticised the Consultative Paper for tipping the balance too far in favour of individual parents⁽²⁸⁾. On the other hand, the SCC argued that in some respects the Consultative Paper did not go far enough. Thus, it criticised the government for ignoring the issue of under-age admissions to primary schools and argued that parents should be given a statutory right of appeal to the sheriff which would eliminate the undesirable practice of keeping children out of school in order to invoke the attendance order procedure⁽²⁹⁾.

On 29 July 1980, in a written parliamentary answer, Alex Fletcher announced that he proposed to introduce legislation much along the lines of his Consultative Paper, the only major change being that provisions of an appeal to the sheriff by a parent who was aggrieved by a decision of an appeal committee. COSLA was provided with a confidential paper outlining the government's proposals for legislation, which was discussed at a further meeting between Alex Fletcher and the Convention's Education Committee on 22 August 1980. A number of questions were raised, in particular about the additional expenditure which might be incurred by education authorities and about the appeals procedures, which the Minister promised to look into, but because Dr Green was concerned that the legislation would not sufficiently take into account COSLA's representations, a Working Group of three Directors⁽³⁰⁾ was asked urgently to produce a paper setting out in precise terms the amendments the Convention would wish to propose⁽³⁰⁾.

The Education (Scotland) (No 2) Bill, which was laid before Parliament on 20 December 1980, contained few surprises⁽³¹⁾. Education authorities would still be able to allocate children to schools, but parents would be given a right to make a placing request for another school and the authority would be required to grant such requests unless one of seven grounds for refusal applied. The most important of these exceptions to the authorities' duty to comply with placing requests applied to circumstances where this would 'exceed the planned admission limit for that school or that stage of education'⁽³²⁾, 'require engaging an extra teacher in the school or give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school, ... or be likely to be seriously detrimental to order and discipline in the school or the educational well-being of the pupils there'⁽³³⁾ or 'if the education normally provided is not suited to the age, ability or aptitude of the

child⁽³⁴⁾. However, the authority could still grant a placing request even if one of the grounds for refusal existed. Education authorities would be required to publish their admission arrangements and the order of priorities which would apply if a school is oversubscribed. Where a placing request is refused, parents would be able to refer the case to an appeal committee⁽³⁵⁾ and subsequently to the sheriff. The powers of the appeal committee and the sheriff were to be identical with those of the authority and, where an appeal is upheld, the decision would be binding on the authority. The only provision in the Bill which was not foreshadowed in Alex Fletcher's parliamentary answer in the draft of the legislative proposals was a novel requirement that where an appeal was upheld and analogous placing requests have been refused, the authority must review their decisions in such cases and, where they do not reverse their decision, the parents would be given a further right of appeal.

Of the 15 organisations which responded to the Consultative Paper, only a handful made detailed criticisms of the Bill and prepared detailed amendments⁽³⁶⁾. The Bill was given its second reading on 12 February 1981 and, during March, it was considered by the First Scottish Standing Committee. The government successfully moved one amendment, to the effect that authorities could only refuse a placing request if they had to take an additional teacher into employment; by contrast the opposition moved a large number of amendments but none of them was successful. The whole impact of the Bill, and the balance it sought to strike between the rights of individual parents and the collective responsibilities of education authorities, was fundamentally altered by the government's late deletion of the clause that would have allowed authorities to fix admission limits for their schools and use those admission limits to justify refusing parents' requests⁽³⁷⁾. The admission limits had been included in the Bill at the request of education authorities who were concerned that they should be able to refuse parents' choices in order to take unsuitable annexes and temporary accommodation out of use, and in order to avoid operating under-enrolled schools which would require higher expenditures and offer lower quality education to children in disadvantaged areas. The clause was removed during the Bill's Third Reading on 18 June 1981, too late for the authorities to protest effectively. Alex Fletcher removed the clause when he realized that authorities could use it to restrict parents' ability to choose popular schools and force them to send their children to unpopular schools, artificially keeping such schools open instead of closing them. He belatedly came to the conclusion that authorities could not be trusted to use the admission limits for legitimate purposes without restricting parental choice. He also realised that the statute would provide no effective way for parents to challenge any artificially low admission limits that the authorities might

adopt. The clause in the Bill would have allowed authorities to justify a refusal simply by asserting that it would breach a schools' admission limit. Parents could not have challenged that limit at an appeal committee or in an appeal to the sheriff. An amendment along these lines had been proposed by the SCC and the SPTC, who pointed out that authorities could have used the provision to reinforce rigid catchment area policies and to deny or seriously restrict choice, and the government may well have been influenced by this. COSLA was incensed, not only by the amendment but also by the stage at which it was introduced. Their co-operation with the government had throughout been on the understanding that any legislation would contain such a provision. However, despite intensive lobbying, it was clear that the government would not back down on this issue. The Bill went to the Lords on 25 June 1981. A number of further amendments were moved but only one was successful. This had the effect of debarring members of the education committee from serving as chairman of an appeal committee. This amendment was accepted by the government and the Bill received its Royal Assent on 30 October 1981, some 14 months after the statutory enactment of parental choice in England.

COMPARISONS WITH THE ENGLISH LEGISLATION

The general structure of the parental choice provisions of the Education (Scotland) Act 1981 is in many ways similar to that of the Education Act 1980. In Scotland, as in England, parents were given the right to request that their children are admitted to a particular school or schools; education authorities are required to comply with parental requests unless a statutory exception to this general duty applies; dissatisfied parents have the right to appeal to a statutory appeal committee and, if the latter finds in favour of the parent, its decision is binding on the authority; and education authorities are required to provide parents with information about the school to which their child has been allocated and about any other school if the parents ask for it. However, there are also some important differences between the two pieces of legislation. First, the statutory exceptions to the authorities duty to comply with parents' requests are broad and general in England but much more specific in Scotland⁽³⁸⁾. In England, the primary exception, which applies when compliance with the parents' request would 'prejudice the provision of efficient education or the efficient use of resources', enables the authority to justify a refusal by referring to conditions at schools other than the one requested by the parents or to conditions in their schools generally. By contrast, in Scotland, where the primary exceptions apply when compliance would entail the employment of an additional teacher or significant extensions or alterations to the school or 'be likely to be

seriously detrimental to order and discipline at the school or the educational well-being of the pupils there', the authority can only refer to conditions at the school requested by the parents. Second, parents in Scotland can appeal an adverse decision of an appeal committee to the sheriff⁽³⁹⁾ while parents in England have no further right of appeal. Thirdly, where an appeal committee or a sheriff upholds an appeal in Scotland, the authority must review the cases of all parents in similar circumstances who did not appeal and, if its decisions are unchanged, it must grant the parents a further right of appeal⁽⁴⁰⁾. There is no comparable provision in the English legislation.

It is somewhat ironic that, although the primary impetus for parental choice legislation came from England, the Scottish legislation appears to establish stronger rights for parents. The explanation for this irony lies partly in the different perspectives of the Ministers responsible for the legislation, partly in the relative influence of English and Scottish local authorities and partly in the different historical antecedents. The English Secretary of State, Mark Carlisle, was rather lukewarm in his support for parental choice. Although he recognised the government's Manifesto commitment and was committed to the principle of parental choice, he was concerned that it should not give rise to additional spending or result in the inefficient use of resources. Moreover, at the end of the day, he was prepared to trust the English LEAs to implement the legislation in good faith. On the other hand, the Scottish Education Minister, Alex Fletcher, was very strongly committed to parental choice⁽⁴¹⁾. Having been closely involved in the disputes over parental choice in Edinburgh, it is clear that he did not trust the education authorities and was thus anxious to specify precisely in the legislation all the exceptions to the authority's general duty to comply with parental requests. He was able to do so, in part because COSLA (which was Labour controlled) had less influence over the Scottish Office than the English local authority associations, in particular the Association of County Councils (ACC) which was Conservative controlled, had over the DES. Thus COSLA was unable to prevent the government from removing at a very late stage in the parliamentary process, a key provision in the Bill which would have allowed education authorities to fix the maximum number of pupils to be educated at a school or at a stage of education in a school and to refuse a placing request where the maximum number has already been reached. COSLA's lack of influence with the government, and the government's own populist tendencies, allowed organisations representing parents (SPTC) and consumers (SCC) to exercise considerable influence over the government and it is significant that these two organisations lobbied for all three amendments which were accepted by the government⁽⁴²⁾. Those who had come to regard themselves as 'insiders' in the policy process strongly resented the influence of these two 'outside' organisations⁽⁴³⁾. The inclusion

of a further right of appeal from appeal committees to the courts in Scotland (but not in England) can, in part, be explained in this way but is also due to the fact that the sheriff already played a role in the Scottish (but not the English) attendance order procedures⁽⁴⁴⁾.

COMPARISONS WITH PREVIOUS SCOTTISH LEGISLATION

Like secondary school reorganisation in Scotland, the introduction of parental choice in Scotland can also best be understood as a political rather than an educational initiative, and as a British policy developed and applied to Scotland rather than a Scottish policy. However, it differed from it in two important respects. Although consensus for the legislation was initially lacking in both instances, in the case of secondary school reorganisation, the government worked hard to obtain and finally achieved an impressive consensus on the issue; in the case of parental choice, the attempt to achieve a consensus was not only somewhat half-hearted but was abandoned at the last moment, the result of which was that a solution was imposed by statute. Objections can be raised to the comparison on the grounds that the two issues are not really comparable, and that one of them (secondary school reorganisation) is arguably much more important than the other. It is also true that it is very much harder for a Conservative than for a Labour administration in Scotland to achieve a consensus with local authorities. Nevertheless, the contrast is still very striking. The second respect in which the parental choice legislation differed from secondary school reorganisation was in the implied relationship between the individual and the education authority. From 1945 onwards, it has been assumed that the interests of the individual coincided with those of the authority, thus the best way of promoting an individual's rights was to improve the provision of education. Now, for the first time, the interests of the individual and the concerns of the authority were seen, at least in some respects, to conflict and the individual was seen to be in need of protection from the authority. We can sum up these changes as follows:

PART 2

TABLE			
date	policy focus	relations between SED and education authorities	relations between interests of parents and those of education authorities
1945	development of secondary schooling	initial consensus between SED and local authorities – consensus subsequently broke down	interests of individual thought to coincide with those of the authority
1965	secondary school reorganisation	initial consensus between SED and local authorities lacking – consensus finally achieved through negotiation	
1981	parental choice of school	initial consensus between SED and local authorities lacking – solution imposed by legislation	interests of individual thought of conflict with those of the authority

It is not part of our argument to suggest that, because the 1981 Act is best understood as a piece of political legislation, or because its origins are to be found south of the border, it is, for either of these reasons deficient. However, the belated deletion of the provision which would have enabled authorities to fix admission limits and refuse to admit pupils in excess of these limits not only magnified their initial antipathy to the legislation but also seriously restricted their capacity to discharge their statutory duty to promote 'adequate and efficient education' for all children⁽⁴⁵⁾. It is important to try to find a balance between the interests of individual parents and the collective concerns of statutory authorities. In exercising choice, a parent has only to think about his/her child. An education authority, on the other hand, is less interested in which school a particular child attends and more concerned with the distribution of all children among its schools. Thus, the interests of individual parents and the concerns of an authority with collective responsibilities may well not coincide. The problem is to find the right balance and a question which must now be asked is whether the 1981 Act has succeeded in doing so.

EARLY IMPLEMENTATION

The parental choice provisions of the 1981 Act came into effect on 15 February 1982. Considering the nature of the legislation and the manner in which it was enacted, it is not surprising that few authorities greeted it with enthusiasm. Nonetheless, the appropriate statutory requirements were fulfilled and each region formulated policies and adapted its procedures to allow for the exercise of choice. New administrative procedures were devised, guidelines (or, at least, a set of criteria) for determining priorities when there were more applications than places at a school were formulated, appeal committees were set up, and information booklets were designed and distributed. Although these activities must have generated substantial demands in terms of manpower and resources, our impression is that the initial implementation of the legislation proceeded without major problems. It should, however, be noted that because admission to primary school in Scotland is based on a system of catchment areas, and because allocation to secondary school is either based on a similar system or on attendance at a 'feeder primary' school, the system of allocation which exists in Scotland is much simpler than some of the 'free choice' systems which operate south of the border⁽⁴⁶⁾.

TAKE-UP

Over the four years since the placing request provisions of the 1981 Act came into effect, the number of placing requests doubled from 10,456 in 1981-82 to 20,795 in 1984-85⁽⁴⁷⁾. 96% of the requests have been for children of school-age and 4% for under-age children, but the number of requests for under-age children has increased quite markedly from 261 (1.5% of the total) in 1982-83 to 1,844 (8.8% of the total) in 1984-85. Among children of school age, more than half the requests (56%) have been for primary school and less than half (44%) have been for secondary school. After increasing steadily from 1981-82 to 1983-84, the number of placing requests for primary schools levelled off in 1984-85 while the number for secondary schools actually declined somewhat. Thus it could well be that a plateau has now been reached.

Over the four years 1982-1985, 97.4% of requests for primary school and 93.8% of requests for secondary school were granted, either at the initial stage or at appeal committee or on appeal to the sheriff. However, there was a downward trend between 1982-83 (when 98.5% of primary

requests and 97.3% of secondary requests were granted) and 1984-85 (when the corresponding figures were 95.7% and 90.3%), reflecting the growing practice of a number of authorities to restrict admissions to schools which would otherwise be oversubscribed. By comparison the success rate for under-age placing requests was much lower – 1,001 out of the 2,618 requests submitted over the period 1983-1985 (38.2%) were refused.

At both primary and secondary levels, the majority of requests are for children entering the first year of school. Thus, in 1984-85, 55.2% of primary requests (6,390 out of 11,561) were for P1 while 68.7% of secondary requests (5,767 out of 8,390) were for S1. The 1984-85 figures are not yet available but in 1983-84, 8.9% of P1 pupils and 8.1% of S1 pupils had made placing requests.

National figures, such as those mentioned above, mask considerable regional and local variations. At primary level, the regions with the highest placing request rates are Tayside (15.4% of P1 pupils in 1983-84), Lothian (11.0%) and Grampian (10.0%). For Strathclyde Region, the overall rate was 9.1%, but the rate for Glasgow Division (12.7%) was substantially higher. The Highlands and Islands have the lowest placing request rates: Highland (1.6% of P1 pupils in 1983-84), Western Isles (1.3%), Orkney (0.8%) and Shetlands (0%). At secondary level, the pattern is very similar. Tayside (13.3% of S1 pupils in 1984), Lothian (11.8%) and Grampian (11.0%) again had the highest rates; Strathclyde (7.8%) was somewhat lower but the rate for Glasgow Division (10.3%) was again higher. The regions with the lowest rates were Highland (1.9%), Shetland (1.3%), Orkney (0.7%) and Borders (0.7%).

It is clear that the more urbanised regions, where schools have relatively small catchment areas and children can easily get to several schools, have higher placing request rates than rural regions where this is usually not the case. Within regions, the same relationships are to be found and placing request rates are highest in the cities and lowest in rural areas. Thus, for example, in 1983-84, 21.1% of the P1 entry and 19.8% of the S1 entry in Dundee had made placing requests⁽⁴⁸⁾ compared with rates of 15.4% and 13.3% in Tayside. Because, in many parts of Scotland, Catholic schools have larger catchment areas than non-denominational schools, we would expect the percentage of placing requests for Catholic schools to be lower and this is, in fact, the case. In 1984, the P1 placing request rate for Catholic schools in Dundee (5.4%) was only 38.0% of the rate for non-denominational schools (14.2%); likewise the S1 placing request rate (12.3%) was only 56.4% of the non-denominational rate (21.8%).

The pattern of under-age requests is completely different. In 1984-85, Strathclyde accounted for 1,476 out of 1,844, i.e. 80.0% of such requests. In the previous year (1983-84), when the number of under-age placing requests was much less, the authority with the highest rate (3.4% of the P1 entry) was Highland Region.

IMPACT ON PARENTS

What kinds of parents have made placing requests for their children and what were their reasons for doing so? The University of Glasgow Parental Choice Project found⁽⁴⁹⁾ that placing requests have been made by parents across the entire social class spectrum and not predominantly by a middle class minority. This finding is confirmed by our own survey research⁽⁵⁰⁾. However, although we were unable to identify any factors which differentiated between parents who had made a placing request (requesters) and those who had not (non-requesters) when we analysed the entire sample of 1,000 respondents, relationships did emerge when the sample was broken down by geographical location and by school catchment area. Thus, the fact that no overall pattern has emerged does not imply that no identifiable patterns exist at a local level.

A very large majority of all parents seem to have been aware of their rights to request a school different from the one allocated to their child by the education authority. Although there were variations between geographical areas, and between the parents of children who were about to enter primary or secondary school, large majorities of non-requesters were aware of their right to select another school. For all parents, the most common source of their knowledge was an official communication from the education department or the school. A large majority of requesting and non-requesting parents were aware that placing requests could be refused. The most common reason was believed to be overcrowding or lack of accommodation at the school and parents overwhelmingly agreed that requests should be turned down in these circumstances. Nearly all the requesters and a large majority of non-requesters were aware of their right to appeal. Overall, parents seemed very well informed about their rights under the 1981 Act.

In presenting a brief account of the ways in which parents used their rights and selected schools for their children, we present our conclusions separately for entry to primary⁽⁵¹⁾ and admission to secondary⁽⁵²⁾. At P1 entry, about 60% of parents who made a placing request were concerned to avoid sending their child to the catchment area school. However, whether or not this was a consideration, the concerns of parents tended to be

pragmatic and pastoral in nature. Proximity and safety (on the one hand) and a concern with the 'happiness' of their child were the dominant concerns. Although the latter may conceal as much (if not more) than it reveals, there was little evidence that parents were influenced by what the child was likely to learn or by the style and quality of teaching at the school. Parents were less concerned with the specifics of educational provision and more concerned with the external attributes of the school, e.g. with 'rough and rowdy' children whose contact they wished to avoid or with overcrowding and accommodation which they regard as inappropriate for their children.

Many of our findings at secondary level replicate those for admission to primary school. At S1 entry, almost 70% of requesting parents were concerned to avoid the district school. Although there were again variations between different areas, there was a similar emphasis upon factors which related to practical and pragmatic considerations rather than to an assessment of educational provisions. Among reasons for rejecting a school, for example, inconvenient location again featured prominently together with the suggestion that the child him/herself did not wish to go to the district school. Thus the question of the child's happiness again appeared to be a dominant factor. Poor discipline was another consideration which was cited frequently – in all geographical locations it was among the top three reasons. In giving their reasons for choosing a school, parents in all areas most frequently said they were choosing a particular school because they thought that their child would be happier there. Siblings who were already at the school, friends who were going there and proximity were all mentioned frequently. On the other hand, there was only occasional reference to the subjects on offer at the chosen school or to the school's educational record in terms of its published examination results. Our general conclusion was that the majority of parents have in mind a broad general agenda in selecting a secondary school for their child and are as much if not more concerned with social considerations than with educational ones.

At both primary and secondary levels, about two thirds of all the parents who made placing requests only considered one school other than the district (catchment area) school. Since about the same proportion of requesting parents were motivated by a concern to avoid their district school, it is clear that, for most requesters, choice involves a process of 'satisficing', in which rejection of an unsatisfactory district school is followed by selection of a satisfactory alternative⁽⁵³⁾. There were very few examples of parents trying to pick the best available school – even at the secondary level, only 10% of requesting parents considered three or more

schools (including private schools).

Overall, our evidence suggests that parents are rather well-informed about their rights; that, although this may not be the case at a local level, those who have exercised their right to make a placing request are a reasonably representative cross-section of parents in terms of social class, income, education, housing, political affiliation etc., but in making a placing request, parents are influenced more by psychological and social considerations over which the school may have little control than by a concern with the education on offer at the school.

IMPACT ON SCHOOLS

As we would expect, placing requests have had a very differential effect on local authority schools. Some schools have experienced substantial net gains while others have incurred substantial net losses; many have been affected hardly at all and, in a smaller number of cases, gains have been matched by losses. Our research on the effects of parental choice on admissions to schools in Dundee⁽⁵⁴⁾ and Edinburgh⁽⁵⁵⁾ suggests that, at the primary level, most of the movement between schools involved a move to an adjacent school (this was the case for 83% of all requests in Edinburgh and 85% in Dundee). Although there are extreme differences in the social composition of school catchment areas in both cities, similar schools tend to be grouped together in certain areas of the city. Because of the local nature of the majority of P1 requests, movement is predominantly within these areas, which are homogeneous with respect to social composition and housing tenure. In both cities there is evidence of a set of sub-systems of movement, usually within these areas.

The main factors which influenced movement between primary schools were similar in the two cities. Movement tended to be towards larger schools (although this could have been because they had gained pupils in the past) and away from schools which are located in areas of social and economic deprivation. In Dundee, there was no evidence of movement away from schools on housing schemes, but there was some slight evidence of this in Edinburgh. In Dundee and Edinburgh, the much smaller number of moves to non-adjacent schools were clearly very different. They tended to be away from local authority housing schemes and towards schools in middle class areas. In both cities, the impact of placing requests on primary school intakes has resulted in sharp gains and losses for a number of primary schools. Some schools are in danger of becoming overcrowded, and as a result, Lothian and Tayside Regions have had to restrict entry to a few schools. At the same time, other schools are seriously undersubscribed.

However, because of the local nature of movement between schools and the social geography of the two cities, placing requests have probably not had a very marked impact on the social composition of school intakes.

Geographical factors were also important at secondary level. In Dundee and in Edinburgh, the greatest amount of movement was between schools which are a fairly short distance apart. After allowing for distance, school attainment measures were the strongest predictors of movement followed by census variables. Thus, movement tended to be towards schools with better SCE results and higher staying-on rates, and towards schools in more middle class areas. In Edinburgh the three schools which gained large numbers of pupils were all located in middle class areas (and were all previously selective schools), while the three schools which lost most pupils were all on local authority housing schemes in areas characterised by a high incidence of social and economic deprivation. In Dundee, the three gaining schools were all previously selective schools, two of which were located in old, inner-city areas, but the two losing schools were both on local authority housing schemes. In one or two cases, particularly in Edinburgh, placing requests have had an effect on the social composition of the intake to the gaining school. In both cities, some of the losing schools now have S1 intakes of less than 100 and their viability must therefore be called into question. Entry to the three gaining schools in Edinburgh has now been restricted (in order that they can abandon annexes and replace temporary accommodation) but access is still unrestricted in Dundee. Overall, the advantages for some children of attending larger secondary schools with more balanced intakes and higher staying-on rates appear to have imposed substantial costs on other children whose curricular choices and wider educational opportunities have been further restricted.

IMPACT ON AUTHORITIES

We can only really comment on three authorities (Lothian, Fife and Tayside) where we have carried out research and studied the impact of the legislation in some detail. In Lothian, the legislation resulted in a radical transformation of the region's policy on school admissions. Prior to the 1981 Act, Lothian's policy on school admissions was one of the most restrictive in Scotland. Under a Labour administration, the region adopted a strong commitment to neighbourhood schools and sought to strengthen the ties between secondary schools and the primary schools within their catchment area. Children were allocated to their local (catchment area) school and, although parents could request an alternative school, such requests were usually refused unless the child involved already had a sibling at the chosen school or there were documented medical reasons which

made it appropriate for the child to be offered a place. The number of transfer requests was fairly small (391 in 1981) but about one-third of them (126 or 32.2%) were refused, although there was frequently room at the school. It was this restrictive policy which led to the confrontation with the Secretary of State soon after the return of the Conservative government, which ended in 1981 when the Secretary of State amended Lothian's transfer scheme and ordered the region to grant parental requests at transfer to secondary school if there was room at the chosen school. This allocation policy inevitably meant that the region would be strongly opposed to the government's legislative proposals. The Labour controlled region accepted the Secretary of State's amendments to its transfer scheme but the 1981 Act completely transformed the existing allocation policy. In the first three years after the Act came into effect, Lothian (which had a minority Conservative administration from May 1982 to May 1986) took the view that the 1981 Act prevented it from refusing any parental requests unless it was clear that the admission of another child would cause 'serious detriment' to the school and the well-being of its pupils. Thus, it accepted virtually all parental requests for non-district schools. As we have already seen, some primary and secondary schools in Edinburgh gained substantial numbers of pupils and became overcrowded, while others lost large numbers of pupils and became seriously undersubscribed. As a result, the intake to some secondary schools has dropped to a point where it has become difficult for them to maintain a wide range of curricular choice.

Lothian undertook a re-evaluation of its policy for secondary schools in 1984. It concluded that it could impose intake limits on overcrowded schools, in particular where it wished to phase out annexes or replace temporary accommodation, but that no direct action could be taken to protect undersubscribed schools. Admission limits were imposed on the three schools which had received most placing requests in 1984-85 and in this year Lothian refused almost 100 requests for the schools in question. 12 parents appealed and three appeals were upheld on the grounds that the region had not properly applied its own criteria for determining priorities. However, there was no challenge to the region's imposition of intake limits. This was also the case in 1985-86 - 94 placing requests were refused for the three intake limited secondary schools, 11 parents appealed but this time none were successful. Lothian also refused a number of placing requests for primary schools, including requests from latecomers to the catchment area. Placing requests have been refused where the admission of another child would breach a contractual agreement on maximum class sizes⁽⁵⁶⁾ and require the appointment of an additional teacher once staffing allocations have been made, or where accommodation restrictions call for a limit on class size lower than the normal maximum. In nearly every case where the

parent has appealed, the appeal committee has upheld the region⁽⁵⁷⁾. There has only been one appeal to the sheriff; this concerned admission to a purpose-built primary school where the design of the building required class sizes to be lower than the normal maximum⁽⁵⁸⁾. In this case too, the sheriff upheld the region.

Not surprisingly, in the light of this experience, Lothian has concluded that it can protect schools from overcrowding. However, since there has only been one appeal to the sheriff, and the circumstances of that case were somewhat atypical, the region cannot be sure that its general policy of imposing intake limits on oversubscribed schools would be upheld by the courts. Although the new Labour administration is committed to developing links between secondary schools and the primary schools within their catchment areas, and to grouping secondary schools together in consortia⁽⁵⁹⁾ it remains to be seen how successfully these policies will protect the curricular choices and wider educational opportunities of pupils at secondary schools which have lost a large proportion of their intake. If they fail, the fears of the critics that the 1981 Act would lead to the reintroduction (by the back door) of a two-tier system of secondary education will have been borne out.

The picture in Fife differs from that in Lothian in a number of respects. In the years immediately following reorganisation, the policy in operation at primary and secondary levels was one of rigid zoning by catchment areas. This policy was fairly strictly applied although some exceptions were made. School rolls were on the whole near to capacity and there was a desire to minimise movement across catchment area boundaries. However, at the beginning of 1978, the attitude of the authority towards parental choice began to shift. Falling rolls in primary schools created greater scope for flexibility and, anticipating that legislation was very likely, the region decided to proceed with the implementation of a scheme for parental choice in primary schools from August 1980. Perhaps because of this initiative at primary level, Fife (which had a Labour administration) was distinctly more favourable than some other regions in its response through COSLA to the government's legislative proposals. At secondary level the authority was somewhat more cautious, concerned at the damage that parental choice could inflict on a balanced comprehensive system. However, with the passing of the legislation Fife proceeded to implement the requirements in a fairly routine manner. The region is committed to accommodate all district pupils within the district school and only in one primary school has it been found necessary to refuse placing requests because of lack of space. This is also the only school where any appeals have been pursued, and no parent has made a further appeal to the sheriff. The

nature of the movement resulting from placing requests has been less dramatic than in some other regions, e.g. Lothian and Tayside, and there have been no problems of overcrowding which have necessitated action of the type experienced in Lothian. There is, however, some increasing concern emerging at the effects that are becoming evident at the least popular secondary schools. Two schools in particular are losing a substantial proportion of pupils. Moreover, pupils are not only opting out on entry to secondary but are applying to attend a primary school within the catchment area of the desired secondary school at an earlier stage, in the belief that this will secure them admission to the secondary school later on. The legislation has accentuated an already vulnerable position in that both of these schools had initial weaknesses but the authority has yet to determine whether, and if so, how it intends to deal with the problem.

The picture in Tayside is different again. After reorganisation, the region adopted a catchment area system and children were allocated to the primary or secondary school which served the catchment area in which they lived. However this policy was operated flexibly and the relatively small numbers of requests for admission to schools other than the catchment area school were granted where space was available. There appears to have been general satisfaction with these procedures and, for this reason, Conservative controlled Tayside was unenthusiastic about the need for legislation.

The main effect of the legislation has been to increase substantially the number of requests for admission to schools other than the catchment area school. As we have seen, this has been particularly marked in Dundee. Nevertheless, in spite of the consequences (the growth of composite classes in primary schools and substantial imbalances in secondary level intakes) Tayside has, until recently, continued to operate a policy of *laissez-faire*. However, this policy was brought to an end when it got in the way of other (more important) policy concerns. Thus, in selecting primary schools for closure the region did not appear to give much weight to parental choice⁽⁶⁰⁾; once the schools had been closed, it then imposed a limit on admissions to adjacent schools; and, in deciding on the future capacity of a secondary school which was to be substantially rebuilt, a limit below its current intake was fixed in order to protect a neighbouring school.

The three regions provide a number of interesting contrasts. They differed, for example, in political control (Fife has always been Labour; Lothian switched from Labour to Conservative in 1982 and from Conservative to Labour in 1986; while Tayside has, until the 1986 regional elections, always been Conservative) and in their attitudes to parental

choice (under Labour, Lothian took a hardline approach; likewise Fife, although it had adopted a more flexible policy for primary school admissions prior to the 1981 Act; while Tayside under the Conservatives was always very flexible). However, the Act itself has had a similar impact on all three authorities. Particularly in the cities, it has produced substantial imbalances in school intakes which have serious staffing and curricular implications. Surprisingly Conservative controlled Lothian Region probably went furthest in the direction of imposing limits on parental choice, although the legality of its attempts to protect schools from overcrowding still remains to be tested in the courts.

THE IMPACT OF APPEALS

The 1981 Act severely curtails the discretion of education authorities to formulate their own allocation policies by granting parents the right to request a school of their choice and placing a duty on authorities to grant any placing request unless one of a small number of grounds for refusal applies. However, it does not remove the authorities' discretion altogether, since they are still free to formulate their own policies within the constraints imposed by the legislation. Under the Act, parents are given a right of appeal against refusal first to an appeal committee and then to the sheriff. Although an authority might be prepared to live with an occasional reversal by an appeal committee, especially if it were on grounds of 'appropriateness' and did not threaten its general policies, it would have to take very seriously any adverse decision by a sheriff. Most authorities have taken a broad view of sheriffs' judgments and have sought to bring their general policies into line with them; those that have taken a narrower view, and have not amended their general policies in the light of sheriffs' decisions in individual cases, have nevertheless had to make exceptions to their general policy whenever a parent has appealed to the sheriff. Thus, the extent to which adverse decisions are appealed and the outcome of these appeals is central to an understanding of the impact of the legislation on policy and practice.

The number of cases taken to an appeal committee has increased from 85 in 1982-83 to 321 in 1984-85⁽⁶¹⁾. Of the 321 appeals in 1984-85, 182 referred to requests for secondary schools, 90 to requests for primary schools for school age children, 47 to requests for early admission from under-age children and 2 to requests for special schools. Overall the total represented 27.6% of parents whose placing requests were refused by the authority, although this proportion was considerably higher for P1 refusals (77 out of 155 or 49.6%) and S1 refusals (157 out of 500 or 31.4%) than for under-age cases (47 out of 376 or 12.5% refusals). The proportion of

appeals upheld was about one quarter for each type of appeal (12 out of 47 for under-age cases, 19 out of 77 for P1 and 2 out of 13 for P2-P7, 39 out of 157 for S1 and 17 out of 25, i.e. rather more, for S2-S6). Appeals to the sheriff have been far fewer in number. Between 1981-82 and 1985-86, less than 50 cases have been heard, and most of these have been decided in favour of the parents. Thus, the number of appeals to the sheriff has been small but not insignificant.

During the course of our research we were able to observe appeal committees in operation in one authority and to compare them with accounts of their operation in another authority⁽⁶²⁾. Focussing here on appeals for oversubscribed schools, neither of the two sets of appeal committees appeared to consider the question of whether the authorities' admission limits are justified in terms of the 1981 Act. In fact, they appeared to consider questions about admission limits as irrelevant to their concerns – in one authority they assumed that admission limits were near-absolute barriers to upholding appeals, whereas, in the other, they considered exceptions without regard to the admission limit, although they did appear to think that too many exceptions would be wrong. Thus, in the first authority, appeal committees saw their role as supportive of the authority. The main emphasis was on explaining to parents why they could not have a place at the school. Appeal committees were also, on occasion, concerned to ensure that the authority had properly applied its own policy and the only appeals which have been upheld in this authority have related to circumstances in which they were of the opinion that the authority had not applied its own policy fairly. In the second authority, appeal committees have seen their task as one of evaluating the circumstances of parents and upholding appeals where the parents put a particularly strong case. Thus, they have been more prepared to make exceptions to the authority's policy. Interestingly, the approaches of the two appeal committees have matched those adopted by the authority. In the first authority, parents are not interviewed and the Placing Request Sub-Committee⁽⁶³⁾ makes a fairly cursory look for special circumstances, its main concern being to apply the Council's guidelines in such a way as to offer places within the school's admission limit. In the second authority, where a school is over-subscribed, all parents are interviewed by the School Council, which makes a real effort to identify special circumstances, and exceptions are made to those admission limit in many cases. Thus, in both cases, appeal committees function as an extension to the procedures and in neither case do they really function as an effective check on the authority.

Our examination of sheriffs' judgments⁽⁶⁴⁾ suggests that they have adopted two different approaches to adjudication. In the 'single child' line

of decisions, sheriffs have interpreted the statutory grounds of refusal restrictively, holding that parents' appeals must be upheld unless the authority can show that a ground of refusal exists in the case of the single child involved in the appeal. Thus, they have refused to allow the harmful effects of overcrowding at the school to justify refusal⁽⁶⁵⁾. In the 'school-level' line of decisions, sheriffs have been prepared to look at the conditions in the school and have taken into account the fact that other parents may have requested the same school and been turned down. These sheriffs have rejected the single child approach, arguing that it makes it virtually impossible to refuse any requests, and have instead examined the authority's justification for limiting admissions, which has usually referred to overcrowding and its detrimental effects on education at the school⁽⁶⁶⁾.

Which of the two approaches sheriffs adopt is obviously of considerable importance to an authority. Where a sheriff adopts the first approach, an authority can be reasonably confident that if it can justify the imposition of admission limits, it will be able to enforce them. Where a sheriff adopts the second approach, the authority can have no such confidence and, although it may still wish to impose admission limits in appropriate cases, it cannot expect to be able to enforce them. In Lothian, there has only been one appeal to the sheriff so far and in this case the sheriff adopted a 'school-level' approach to adjudication and, in doing so, found in favour of the authority. On this basis, and because the appeal committees have been prepared to go along with it, the region feels confident about the legality of its policy of determining and enforcing admission limits on schools it regards as oversubscribed. There have been no appeals to the sheriff in Fife or Tayside, although there may well be appeals to the sheriff in Tayside now that the region has imposed admission limits on some of its schools. The main contrast with Lothian is Strathclyde, where there has been a string of appeals to the sheriff and where all the sheriffs have adopted the 'single child' approach to adjudication. In doing so, they have consistently found in favour of the parents. The main consequence of this is that, although the region continues to set admission limits for its schools, it can no longer enforce them if and when parents appeal to the sheriff. As a result, Strathclyde Region now concedes most appeals as soon as they are lodged with the sheriff⁽⁶⁷⁾. The 1981 Act prevents all authorities from taking any direct steps to protect their undersubscribed schools; in Strathclyde one consequence of the string of shrieval judgments is that the authority can, in effect, no longer protect its oversubscribed schools either.

EARLY AGE ADMISSIONS

The increasing focus on the admission of under-age children to primary education is a development which was not foreseen by those who initiated the 1981 legislation. Few areas adjusted their policy towards early age admission in the light of the Act, and, in all but one of the education authorities, applications were treated separately from placing requests. The major effect of this being to deny any access to the appeal procedures. However, this practice was called into question in an opinion by the Sheriff Principal in Aberdeen in a test case (the Boyne case)⁽⁶⁸⁾, in which it was ruled that education authorities were under a duty to treat requests for under-age children as placing requests in terms of the Act.

This interpretation had initially been resisted by most authorities and on the initiative of Lothian Region steps were taken to make representation through COSLA to the Secretary of State that the legislation should be modified specifically to exclude requests for under-age children. However, the SED had, by this time, already responded to the Sheriff Principal's decision in the Boyne case by issuing Circular 1108/1984⁽⁶⁹⁾. This made it clear that applications for early admission were to be treated as placing requests and threatened action under section 70 of the 1980 Act if education authorities did not comply⁽⁷⁰⁾. In doing so, the Secretary of State intimated that the judgment in the Boyne case accurately reflected the legislative intention of the government that parents of under-age children should have the right to make a placing request and access to the statutory appeal procedures if that request is refused. Not only is this a very questionable interpretation of the legislation, it is also a rather unusual way for the government to make policy. Nevertheless, the majority of authorities reluctantly capitulated to the demands of this Circular, although at least one continues to be less than explicit over the right of appeal in its explanatory leaflet.

We have already referred to the increasing number of requests for early admission and the increasing number of under-age appeals. The placing request rate varies considerably between authorities. We have already seen that the largest number (1,476 out of 1,844 or 80% of the total in 1984-85) came from Strathclyde. However, as a proportion of the P1 population Highland (97 cases, 3.4% of P1 intake in 1983-84) and Borders (25 cases, 2.1% of P1 intake in 1983-84) are also higher than most other regions. The policies of the authorities also differed a great deal: whereas Strathclyde granted 63.4% of under-age placing requests in 1985, Tayside granted 24.3% (6 out of 25) while Lothian only granted 8.1% (3 out of 37).

These differences, which are again replicated in the approach to under-age cases taken by appeal committees, also reflect differences in their interpretation of the statutory grounds for refusing such requests. Children who are under the statutory age of entry may be refused admission if 'the education normally provided at the school is not suited to the age, ability or aptitude of the child'⁽⁷¹⁾. While most authorities (including Strathclyde) consider the terms 'age', 'ability' and 'aptitude' in the phrase 'age, ability or aptitude' conjunctively, arguing that age on its own is not a ground for refusal and must be considered along with ability and aptitude; some (including Lothian) interpret the phrase disjunctively and regard age as a sufficient ground for refusal. The second interpretation does not put an end to the matter since the Act gives authorities (and likewise appeal committees and sheriffs) the power to grant a placing request even where the ground for refusal applies if they consider it appropriate to do so⁽⁷²⁾. Although the first approach was adopted by the sheriff in a recent appeal in Highland Region⁽⁷³⁾, in another recent appeal (this time in Lothian Region)⁽⁷⁴⁾ the sheriff accepted the view of both parties that the word 'or' implied that the terms could be used disjunctively with the result that the appeal was refused on the grounds of the child's age alone. Thus, the issue remains unresolved and different authorities persist with their different interpretations.

This being so, Lothian and Strathclyde adopt approaches to under-age admissions which parallel their approaches to requests for oversubscribed schools. Lothian has a policy of refusing applications from under-age children and is very reluctant to make exceptions to it. Strathclyde on the other hand (and Tayside to a lesser extent) is much more prepared to assess the ability of the child to benefit from a school education and has seen fit to admit a substantial number of under-age children. In each case, the region's policy is replicated by its appeal committees. These differences in policy in part reflect differences in interpretation of the relevant statute. However, they also reflect a different stance towards the legislation largely imposed upon the authorities by different kinds of shrieval judgments, as well as more mundane considerations such as the extent of nursery school provision in the respective regions. This notwithstanding, the cost to Strathclyde of admitting large numbers of under-age children is quite substantial – figures have been published to the effect that the region has had to employ 44 extra teachers at a cost of £200,000⁽⁷⁵⁾ – and the authority is concerned about the administrative and financial implications. Others have expressed concern at the long-term educational implications of this development⁽⁷⁶⁾.

CONCLUSION

Having considered the impact of the parental choice provisions in the 1981 Act on parents, schools and education authorities, we are now in a position to assess whether the legislation has achieved a satisfactory balance between the rights of individual parents and the duties of education authorities with collective responsibilities for all children. The rights granted to parents under the act appear to be widely understood; parents who have made placing requests do not seem to have experienced any difficulties in doing so; the extent of take-up, particularly in urban areas, has been quite substantial; and placing requests have been made by parents across the entire social class spectrum. In choosing schools, most parents have emphasised psychological and social concerns rather than educational ones. They have, in many cases, been concerned to avoid their district school and have opted for a more satisfactory alternative. In doing so, they have been influenced more by the general reputation of the schools than by any careful assessment of the education they provide. Thus, there is a good deal of evidence for 'incremental problem solving' but considerably less for 'rational choice'⁽⁷⁷⁾.

In many areas, the exercise of choice has imposed few, if any, costs but, in other areas, the costs have been quite considerable. In a few cases, the exercise of choice by some parents has deprived others of the opportunity to send their child to their local (catchment area) school. Elsewhere, it has caused overcrowding which, in spite of the provisions in the act which were intended to prevent it, has undoubtedly caused 'serious detriment' to other children. It has, likewise, resulted in some very under-subscribed schools. This is of particular concern at secondary level where curricular choices and educational opportunities for pupils at such schools may be seriously affected. In the case of under-age children, the exercise of choice by some parents may not be in the long-term interests of their own children and may, in addition, impose costs on the other (school-age) children in the class. Although parents' rights may not be seen to be in need of much protection, there is little evidence that appeal committees provide such protection when it is needed or that they function as an effective check on the powers of education authorities.

While the parental choice provisions of the 1981 Act have substantially enhanced the rights of parents, they have, at the same time, seriously curtailed the powers of education authorities. Thus, Scottish education authorities (unlike their English counterparts) have no powers to protect under-subscribed schools. Although the act did give them powers to protect over-subscribed schools, where one of the statutory exceptions to the general duty to comply with placing requests applies, their ability to do so is

largely dependent on the approach to statutory interpretation adopted by sheriffs in the small number of appeal cases that have been taken that far. The same applies to the authorities' ability to say 'no' to the admission of under-age children. There are no sanctions for authorities which choose to adopt a laissez-faire approach to school admissions, but those which do not may find their decisions struck down by the courts. Appeals to the sheriff have not removed inconsistencies in statutory interpretation, nor are they likely to do so since sheriffs have disagreed on all the key issues they have had to consider, and this, as much as differences in the policies of the authorities, results in substantial diversity of practice. In urban areas, the act has caused serious imbalances in school intakes and, particularly at secondary level, there is evidence that it has not only increased educational inequality but that it is also leading to the reintroduction (in another form) of the old (and discredited) two-tier system of schooling. Thus, although placing requests have been unproblematic in many areas, our overall conclusion is that the 1981 Act has not achieved the right balance between the rights of individual parents and the collective duties of education authorities. Moreover, we do not think the right balance will be achieved unless and until education authorities are given more powers to control admissions to school, subject to effective safeguards which would ensure that these powers are used responsibly to prevent parental choice from prejudicing equality of educational opportunity or the duty placed on education authorities to promote 'adequate and efficient education' for all.

*This paper is based on a programme of research on parental choice in education, funded initially by the ESRC and latterly by the SED, and we would like to thank both these organisations for their financial support. We would also like to thank our secretary, Valerie Chuter, for her forbearance and for her practical help in a variety of ways. In addition, we would like to acknowledge the considerable assistance we have received from many individuals who helped us by giving us their time, answering our questions, providing us with data or with access to their files. Without their assistance our research could not have been undertaken. A shorter version of this paper was presented at the annual conference of the Scottish Educational Research Association, held at the University of St Andrews, 25-27 September 1986.

Michael Adler, Department of Social Policy and Social Work, University of Edinburgh.

Alison Petch, Social Work Research Centre, University of Stirling.

Jack Tweedie, Department of Political Science, State University of New York at Binghamton.

References

1. The 1946 Act runs to 109 pages and contains 144 sections and 6 schedules. It is about the same length as the (English) Education Act 1944, which runs to 109 pages and contains 122 sections and 9 schedules.
2. Education (Scotland) Act 1946, s 1(1).
3. *ibid*, s 7(2).
4. *ibid*, s 65.
5. *ibid*, s 66.
6. *ibid*, s 31.
7. *ibid*, s 35.
8. Watt v Kesteven County Council (1955) 1 QB 408. See also, Paul Meredith (1981), 'Executive Discretion and Choice of Secondary School', *Public Law*, pp 52-82.
9. C M G Himsworth (1980), 'School Attendance Orders and the Sheriff', *Journal of the Law Society of Scotland*, pp 450-455.
10. Education (Scotland) Act 1946, s 30.
11. Scottish Education Department (1947), *Secondary Education : a Report of the Advisory Council on Education in Scotland*, Cmnd. 7005, Edinburgh: HMSO.
12. In the financial year 1983-84, public expenditure on education came to 5.2% GDP. 13. Andrew McPherson and Charles Raab (1987), *The Making of Scottish Educational Policy*, Edinburgh: Edinburgh University Press (forthcoming). Our account of early post-war developments is based on theirs.
14. Our account of secondary school reorganisation also draws very heavily on McPherson and Raab, *op cit*.
15. Scottish Education Department (1965), 'Reorganisation of Secondary Education on Comprehensive Lines' (Circular 600).
16. This was the only one on which the Secretary of State used his powers to amend an authority's transfer scheme.

17. The following account is based on research carried out by our colleague Jack Tweedie. See Jack Tweedie (1986), 'Parental Choice of School: Legislating the Balance' in Andy Stillman (ed) (1986), *The Balancing Act of 1980: Parents, Politics and Education*, Slough: National Foundation for Educational Research, pp 3-11.

18. The Conservative's Election Manifesto for October 1974 included the following: A CHARTER OF PARENTS' RIGHTS: An important part of the distinct Conservative policy on Education is to recognise parental rights. A say in how their children are to be brought up is an essential ingredient in the parental role. We will therefore introduce additional rights for parents. First, by amending the 1944 Education Act, we will impose clear obligations on the State and local authorities to take account of the wishes of parents. Second, we will consider establishing a local appeal system for parents dissatisfied with the allotment of schools. (The Charter goes on to promise parental representation on boards of governors, an obligation to form parent-teachers associations, and a requirement that schools publish prospectuses.)

19. Education (Parents' Charter) Bill, 1974.

20. Department of Education and Science (1977), 'Consultation Paper – Admission of Children to the School of their Choice'.

20a. According to a Scottish Office *Press Notice*, issued on 24 November 1978 "In England and Wales, the law on school admissions is confusing and to some extent contradictory, and the extent to which parents can express a preference varies widely from area to area. No similar need for legislation exists in Scotland."

21. The 1979 Conservative Manifesto stated: Extending parents' rights and responsibilities, including their right of choice, will also help raise standards by giving them greater influence over education. Our parents' charter will place a clear duty on government and local authorities to take account of parents' wishes when allocating children to schools, with a local appeals system for those dissatisfied. Schools will be required to publish prospectuses giving details of their examination and other results.

22. This was the first of several meetings between Alex Fletcher, SED officials, elected members of the COSLA Education Committee and Directors of Education (in their role as advisors to the Committee) at which the Minister outlined the government's thinking in general terms and

sought a response from the Convention.

23. Other items on the agenda were the need to monitor educational standards and the assisted places scheme.

24. Scottish Education Department (1980), 'Consultative Paper: Admission to Schools – A Charter for Parents'. The other Consultative Papers dealt with curriculum development, education for the 16-18s, and the assisted places scheme.

25. *Times Educational Supplement (Scotland)* (1980), 'Fletcher Unveils "The New Spirit"', 7 March, p 1.

26. Scottish Education Department (1980), *op cit*, para 6.

27. Alastair Macbeth, David Strachan and Caithlin Macaulay (1986), *Parental Choice of School in Scotland*, Department of Education, University of Glasgow, chapter 3.

28. Confederation of Scottish Local Authorities (1980), 'Observations on the Consultative Paper "Admission to School – a Charter for Parents"'.

29. Scottish Consumer Council (1980), 'A Charter for Parents – the SCC's Reply to the Government's Proposals'.

30. The particular concerns of the Working Group, comprising I G Halliday (Depute Director of Education, Strathclyde), D G Robertson (Director of Education, Tayside) and W D C Semple (Director of Education, Lothian), related to the appeal arrangements information for parents and the proposal to use regulation rather than advisory circulars.

31. Other important provisions contained within the bill dealt with special educational needs, the assisted places scheme, changes in the powers of the Secretary of State and the duties of education authorities, and a number of miscellaneous matters.

32. Education (Scotland) (No 2) Bill, clause 28A(3)(a)(i).

33. *ibid*, clauses 28A(3)(a)(ii) to (v).

34. *ibid*, clause 28A(3)(b).

35. Comprising 3, 5 or 7 members. Members of the authority or its

education committee could not outnumber those who were not by more than one. Although the appeal committees were to be set up by the authorities, they were nevertheless placed under the general supervision of the Scottish Committee of the Council of Tribunals.

36. COSLA, the EIS, the SCC and the SPTC all prepared detailed amendments to the Bill.

37. Education (Scotland) (No 2) Bill, clause 28A(3)(a)(i).

38. Compare section 6(3) of the Education Act 1980 with section 28A(3) of the Education (Scotland) Act 1981.

39. Education (Scotland) Act 1981, s 30.

40. *ibid*, ss 28E(5) and 28F(6).

41. In September 1978, together with John MacKay, MP, Alex Fletcher published a Conservative Party paper entitled 'Scottish Education - Regaining a Lost Reputation' in which he stated his strong support for greater freedom of choice of school.

42. The introduction of a right of appeal to the sheriff, the removal of the provision enabling authorities to set admission limits and refuse placing requests when these are reached, and the requirement that appeal committees should be chaired by one of the independent members.

43. John Pollock, General Secretary of the EIS, was quoted as saying: 'The government is using outside organisations in order to slip through vital amendments which would fundamentally affect Scottish education in years to come, without consultation and with the minimum of fuss'. It is clear that he was complaining that 'inside' organisations had not been consulted.

44. Education (Scotland) Act 1980, s 1(1).

45. For an analysis of the role of the sheriff in Scotland, see C M G Himsworth (1980), *op.cit*. In England, the Secretary of State was empowered to alter the terms of an attendance order under section 37(3) of the Education Act 1944. For an account of the English provisions, see Paul Meredith (1981), *op cit*.

46. On the much greater variety of allocation procedures in England, see Andy Stillman and Karen Meychell (1986), *Choosing Schools: Parents,*

LEAs and the 1980 Education Act, Windsor: NFER-Nelson, chapter 3.

47. Most of the data in this section are taken from Scottish Education Department (1986), 'Placing Requests in Education Authority Schools', *Statistical Bulletin*, No 5/B6.

48. Data for Dundee Division were provided by Tayside Region Education Department.

49. Alastair Macbeth, David Strachan and Caithlin Macaulay (1986), *op cit*.

50. Alison Petch (1986a), 'Parental Choice at Entry to Primary School', *Research Papers in Education*, 1(1), pp 26-47; and Alison Petch (1986b), 'Parents' Reasons for Choosing Schools' in Andy Stillman (ed) (1986), *The Balancing Act of 1980: Parents, Politics and Education*, Slough: National Foundation for Educational Research, pp 28-35.

51. Alison Petch (1986a), *op cit*.

52. Alison Petch (1986b), *op cit*.

53. H A Simon (1965), *Administrative Behaviour*, New York: The Free Press.

54. Michael Adler and Gillian Raab (1986), 'Survival of the Fittest? the Impact of Parental Choice on Admission to Primary and Secondary Schools in Dundee', Department of Social Policy and Social Work, University of Edinburgh (unpublished paper).

55. Gillian Raab and Michael Adler (1986) 'Exploding Some Myths about the Uniqueness of Edinburgh: the Impact of Parental Choice on Admission to Primary and Secondary Schools in Edinburgh', Department of Social Policy and Social Work, University of Edinburgh (unpublished paper).

56. The 'normal maximum class size' is set at 33 in the conditions of service for teachers. Although the size of the class may exceed the 'normal maximum', where this is held to be 'reasonable', Lothian region does not consider increases resulting from placing requests to be reasonable. The absolute limit on class numbers is 39.

57. Five appeals for one 'open plan' primary school, where the authority wished to reduce the size of P1 classes from 33 to 30 to avoid overcrowding,

although the 'normal maximum' had applied in previous years, were upheld in 1983. Over the five year period 1982-1986, 32 other appeals (from school age children) for admission to primary school were all refused. These data were supplied by Lothian Region Education Department.

58. *Forbes v Lothian Regional Council* (1982), (Edinburgh Sheriff Court, 29 October), unreported.

59. *Times Educational Supplement (Scotland)* (1986), 'Lothian to Step Up Consortia' 16 May, p 1. Strathclyde Region has operated consortia arrangements for some time.

60. Michael Adler (1985), 'Falling Rolls and Risig Conflict', Department of Social Policy and Social Work, University of Edinburgh (unpublished paper).

61. See Scottish Education Department (1983) 'Placing Requests in Education Authority Primary and Secondary Schools', *Statistical Bulletin*, No 9/B6; and Scottish Education Department (1986), *op cit*.

62. Jack Tweedie, Michael Adler and Alison Petch (1986), 'The Rights and Wrongs of Education Appeal Committees', Department of Social Policy and Social Work, University of Edinburgh (unpublished paper).

63. Where there is space in the school, places are allocated by the Education Department. However, where the number of applications is greater than the number of available places, decisions are taken by a sub-committee of the Education Committee.

64. Jack Tweedie and Michael Adler (1986), 'Parental Choice: Liberty or License', *Journal of the Law Society of Scotland*, pp 305-310.

65. The majority of sheriffs have adopted the 'single child' approach in their decisions. Among the early cases, see the following: *Mrs M Y v Strathclyde Regional Council* (1982), (Glasgow Sheriff Court, 16 August); *Mrs A B or K v Strathclyde Regional Council* (1982), (Glasgow Sheriff Court, 16 August); *Mrs A K v Strathclyde Regional Council* (1982), (Sheriff Principal, Glasgow Sheriff Court, 9 September); *Duggan, Murray and Paul v Strathclyde Regional Council* (1983), (Glasgow Sheriff Court, 17 August), and *Easton v Strathclyde Regional Council* (1984), (Ayr Sheriff Court, 27 August); all unreported. The decision by the Sheriff Principal in *Mrs A K v Strathclyde Region* was particularly influential.

66. Three sheriff's decisions have followed the 'school level' line of reasoning: *Forbes v Lothian Regional Council* (1982), *op.cit*; *X v Shetland Islands Council* (1983), (Lerwick Sheriff Court, 19 October), and *D v Grampian Regional Council* (1984), (Aberdeen Sheriff Court, 29 August); all unreported.

67. During the school year 1984-1985, Strathclyde Region conceded more than 40 appeals in this way. In the period August-December 1985, there were six further appeals to the sheriff in Strathclyde Region. In the first two cases (involving the same school), the Region concluded that it would be unable to establish its case and did not contest the actions. The Region decided to treat the third appeal as a test case but, when the sheriff upheld the appeal, the Region did not contest the two other appeals for this school. In the sixth appeal (for another school), the Region again concluded that it would be unable to establish its case and did not contest the action.

68. *Boyne and Boyne v Grampian Regional Council* (1983), (Sheriff Principal, Aberdeen Sheriff Court, 29 October), unreported.

69. Scottish Education Department (1984), 'Placing Requests: Under-Age Children', (Circular 1108).

70. Under s 70, "If the Secretary of State is satisfied...that an education authority...have failed to discharge any statutory duty imposed on them by the 1980 Act, he may make an order declaring them to be in default in respect of their duty and requiring them before a date specified in the order to discharge that duty".

71. Education (Scotland) Act 1981, s 28A(3)(b).

72. *ibid*, s 28A(3).

73. *Mackay v Highland Regional Council* (1985), (Inverness Sheriff Court, 11 September), unreported.

74. *Coates and Coates v Lothian Regional Council* (1986), (Linlithgow Sheriff Court, 3 January), unreported.

75. *Times Educational Supplement (Scotland)* (1985), 'Strathclyde Stretched by Early Placings', 8 November, p 3.

76. The Association of Directors of Education in Scotland (ADES) and COSLA have both made representations to the SED. In addition, it was

one of the main issues raised at the 1986 Annual Conference of the Association of Headteachers (Scotland). Under-age admissions are equally a problem south of the border and it is significant that the DES has recently sponsored a review of existing under-fives research (from Professor Margaret Clarke of Birmingham University), and the NFER is currently carrying out a survey of (English) education authorities' policies towards children starting school at four years of age.

77. David Braybrooke and Charles E Lindblom (1963), *A Strategy of Decision*, New York: The Free Press.